

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

IN RE:

MICHAEL C. ECHOLS,

Debtor.

CASE NO.: 18-40261-KKS

CHAPTER: 7

SHERRY CHANCELLOR,  
TRUSTEE

Plaintiff,

ADV. NO.: 18-04019-KKS

v.

MICHAEL C. ECHOLS,

Defendant.

**ORDER GRANTING, IN PART, PLAINTIFF'S AMENDED MOTION  
FOR SUMMARY JUDGMENT (DOC. 16)**

THIS MATTER is before the Court on Plaintiff's *Amended Motion for Summary Judgment* ("Motion," Doc. 16) to which Defendant filed a response and Affidavit in opposition (Docs. 22 and 23). Having reviewed the Motion, other pleadings, and the applicable case law and statutes, the Court finds that the Motion should be granted, in part; Plaintiff is entitled to summary judgment in her favor on Count II of the Complaint.

## SUMMARY JUDGMENT STANDARD

Summary judgment is governed by Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. The Court shall grant summary judgment if there is no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law.<sup>1</sup> “Conclusory allegations by either party, without specific supporting facts, have no probative value.”<sup>2</sup> “Facts are material if they ‘might affect the outcome of the suit under the governing law’ and disputes over material facts are genuine if ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’”<sup>3</sup>

## ANALYSIS

In the Complaint, Plaintiff asserts three (3) causes of action in three (3) separate counts, all seeking denial of Defendant’s discharge. Because the Motion is due to be granted as to Count II of the Complaint, which alleges that Defendant’s discharge should be denied under 11 U.S.C. § 727(a)(4)(A), this Order will address Count II first.

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<sup>1</sup> Fed. R. Civ. P. 56(a) as made applicable by Fed. R. Bankr. P. 7056.

<sup>2</sup> *In re Hintze*, 525 B.R. 780, 784 (Bankr. N.D. Fla. 2015).

<sup>3</sup> *Id.*

**A. Count II – Denial of discharge under 11 U.S.C. § 727(a)(4)(A).**

Section 727(a)(4)(A) provides that “the court shall grant the debtor a discharge—unless the debtor knowingly and fraudulently, in or in connection with the case—made a false oath or account.”<sup>4</sup>

**1. The undisputed material facts.**

For years, Defendant owned property at 200 Parkbrook Circle, Tallahassee, Florida; on April 3, 2018, Defendant signed a Quit Claim Deed transferring the property to his non-debtor spouse.<sup>5</sup> Forty-three (43) days later, Defendant filed a voluntary petition for relief under Chapter 7.<sup>6</sup>

Defendant did not disclose this transfer of property to his wife on his original Statement of Financial Affairs (“SOFA”), which he signed under penalty of perjury and filed on May 16, 2018.<sup>7</sup> Plaintiff filed the Complaint commencing this Adversary Proceeding on October 11, 2018 and effectuated service on Defendant on October 18, 2018.<sup>8</sup> On January

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<sup>4</sup> 11 U.S.C. § 727(a)(4)(A) (2019).

<sup>5</sup> Docs. 1 and 8.

<sup>6</sup> *In re Michael C. Echols*, Case No.: 18-40261-KKS, Doc. 1, *Chapter 7 Voluntary Petition* (Bankr. N.D. Fla. May 16, 2018).

<sup>7</sup> *Id.* at pp. 29-35.

<sup>8</sup> Docs. 1 and 4.

8, 2019, Defendant filed an amended SOFA in which he listed the transfer to his wife.<sup>9</sup>

**2. Legal standard under 11 U.S.C. § 727(a)(4)(A).**

A party objecting to a debtor's discharge under § 727(a)(4)(A) must establish the following by a preponderance of the evidence: (1) the debtor made a false statement under oath; (2) the debtor knew that the statement was false; (3) the statement was material to the bankruptcy case, and (4) the debtor made the statement with fraudulent intent.<sup>10</sup> As this Court has previously stated, Section 727 was enacted to prohibit a discharge "for those who play fast and loose with their assets or with the reality of their affairs."<sup>11</sup>

**3. Defendant knowingly made a false statement under oath regarding a material fact.**

The veracity of a debtor's schedules and SOFA is paramount to the successful administration of a bankruptcy case.<sup>12</sup> The Bankruptcy Code requires Chapter 7 debtors to fulfill certain fundamental duties, "the most essential of which is the complete and honest disclosure of assets

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<sup>9</sup> *In re Michael C. Echols*, Case No.: 18-40261-KKS, Doc. 38, *Amended Statement of Financial Affairs for Individuals Filing Bankruptcy* (Bankr. N.D. Fla. Jan. 8, 2019).

<sup>10</sup> *In re Mitchell*, 496 B.R. 625, 631-632 (Bankr. N.D. Fla. 2013) citing *In re Eigsti*, 323 B.R. 778, 783-784 (Bankr. M.D. Fla. 2005).

<sup>11</sup> *Id.* at 632 (quoting *In re Leffingwell*, 279 B.R. 328, 350 (Bankr.M.D.Fla.2002)).

<sup>12</sup> *Id.*

and recent transfers by the debtor.”<sup>13</sup> When a debtor omits important facts and information and does not make a full disclosure, the debtor places his right to discharge in serious jeopardy.<sup>14</sup>

A fact is material if it “bears a relationship to the [debtor’s] business transactions or estate, or concerns discovery of assets, business dealings, or the existence or disposition of his property.”<sup>15</sup> It is beyond question that Defendant’s failure to disclose his transfer of property to his spouse within forty-five (45) days pre-petition is material and concerns discovery of assets. Had Plaintiff not discovered this transfer, apparently from an outside source, Defendant’s omission of the transfer could have seriously hindered, if not totally precluded, Plaintiff’s ability to find assets and verify Defendant’s disposition of his property.

Defendant knowingly filed his original SOFA in which he answered “no” to the following question:

**18. Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?**<sup>16</sup>

<sup>13</sup> *Id.* (quoting *In re Eigsti*, 323 B.R. at 783).

<sup>14</sup> *Id.* (quoting *Heidkamp v. Grew (In re Grew)*, 310 B.R. 445, 451 (Bankr.M.D.Fla.2004)).

<sup>15</sup> *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11<sup>th</sup> Cir. 1984); *Musselman v. Malave*, Adv. No. 6:18-ap-00063-KSJ (Bankr. M.D. Fla. Jan. 17, 2019).

<sup>16</sup> *In re Michael C. Echols*, Case No.: 18-40261-KKS, Doc. 1, p. 32, *Statement of Financial Affairs for Individuals Filing Bankruptcy* (Bankr. N.D. Fla. May 16, 2018) (emphasis in original).

Having thus answered, Defendant signed his SOFA as follows:

I have read the answers on the *Statement of Financial Affairs* and any attachments, *and I declare under penalty of perjury that the answers are true and correct.* I understand that making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines. .  
..<sup>17</sup>

By so doing, Defendant made a false oath.

**4. Facts and circumstantial evidence show that Defendant had the requisite fraudulent intent when making the false oath.**

Courts may look to the totality of the circumstances, including the recklessness of a debtor's behavior, to infer whether a debtor submitted a statement with intent to deceive.<sup>18</sup> Because debtors generally will not testify as to their own misconduct, that a false oath was made knowingly and fraudulently is generally proven by circumstantial evidence or inferences drawn from circumstances surrounding the debtor.<sup>19</sup>

In *In re Davis*, the debtor failed to disclose several items in his bankruptcy Schedules and SOFA.<sup>20</sup> Like the Defendant in the instant case, the debtor in *Davis* did not amend those documents until after the

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<sup>17</sup> *Id.* at p. 34 (emphasis added).

<sup>18</sup> *In re Mitchell*, 496 B.R. at 640.

<sup>19</sup> *Id.*

<sup>20</sup> *In re Davis*, 363 B.R. 614 (Bankr. M.D. Fla. 2006).

Trustee sued him and brought the failure to disclose to light.<sup>21</sup> In denying the debtor's discharge for making a false oath, the bankruptcy court in *Davis* stated the debtor violated Section 727(a)(4)(A) "by not disclose [*sic*] accurate information in his bankruptcy Schedules and Statement of Financial Affairs. The documents he filed were executed under oath and subject to the penalty of perjury."<sup>22</sup> In delivering its ruling, the court in *Davis* emphasized that the debtor did not disclose material information in his bankruptcy schedules relating to his assets.<sup>23</sup>

In another case with facts similar to those at bar, the Bankruptcy Court for the Middle District of Florida took testimony from the debtor, found the debtor's testimony not credible, and held that though the debtor offered an explanation as to why she failed to list certain assets, that explanation was not sufficient to overcome the presumption that she willfully and knowingly made a false oath.<sup>24</sup> In the instant case, Defendant filed an Answer to the Complaint and an Affidavit in opposition to the Motion, neither of which contains any explanation of

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<sup>21</sup> *Id.* at 620.

<sup>22</sup> *Id.* The court in *Davis* ruled after an evidentiary hearing during which it took testimony of the debtor. But there, the court appears to have reached the conclusion that debtor's discharge should be denied without evidence outside the fact that the SOFA and Schedules filed were signed knowingly under penalty of perjury and were inaccurate.

<sup>23</sup> *Id.* at 618.

<sup>24</sup> *Musselman v. Malave*, Adv. No. 6:18-ap-00063-KSJ, Doc. 31, *Memorandum Opinion Denying Debtor's Discharge* (Bankr. M.D. Fla. Jan. 17, 2019).

why he failed to disclose his eve-of-bankruptcy transfer of property to his wife.

In *In re Williamson*, the bankruptcy court denied a debtor's discharge on summary judgment, noting that the debtor amended her SOFA to include property she had transferred away pre-petition only after the Chapter 7 trustee discovered the transfer.<sup>25</sup>

Here, Defendant waited approximately three (3) months after Plaintiff sued him and almost eight (8) months after he filed his Chapter 7 petition to file his amended SOFA and disclose the transfer to his wife.<sup>26</sup> Defendant has offered no justification for the transfer or his failure to disclose. He has provided no reason his fate should be different from that of the debtor in *Williamson*.

**5. Plaintiff has met her burden to prove the elements of Section 727(a)(4)(A); Defendant has not rebutted Plaintiff's evidence.**

The plaintiff has the initial burden of proving, based on a preponderance of the evidence, that a debtor's discharge should be

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<sup>25</sup> *In re Williamson*, Case No. 11-60755, 2013 WL 441418, at \*4 (Bankr. S.D. Ga. Feb. 1, 2013) ("Taken together, these actions show a clear intent to defraud or at least hinder or delay her creditors.").

<sup>26</sup> *In re Michael C. Echols*, Case No.: 18-40261-KKS, Doc. 38, *Statement of Financial Affairs for Individuals Filing Bankruptcy* (Bankr. N.D. Fla. Jan. 8, 2019).

denied.<sup>27</sup> Once a plaintiff has met its burden, the burden shifts to the defendant to rebut plaintiff's *prima facie* case by showing that he did not knowingly and fraudulently make a false oath.<sup>28</sup> As one bankruptcy court put it:

*... once it reasonably appears that the oath is false, the burden falls upon the bankrupt to come forward with evidence that he has not committed the offense charged. (citation omitted.) The trier of fact may rely upon reasonable inferences as well as direct evidence. Thus, the trier may infer fraudulent intent from an unexplained false statement. (citation omitted.)*<sup>29</sup>

The only “evidence” Defendant has tendered is the Affidavit he filed in opposition to the Motion, in which he merely states: “[i]n failing to list the transfer of the property. . . to my wife prior to filing, I did not do so intentionally to deceive the Plaintiff or my creditors.”<sup>30</sup>

Applying the burden of proof to the case at hand, once Plaintiff proved that Defendant made the transfer, failed to list the transfer in his

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<sup>27</sup> Fed. R. Bankr. P. 4005; *Premier Cap., LLC v. Crawford (In re Crawford)*, 841 F.3d 1, 7 (1st Cir. 2016)(stating “Under § 727(a)(4)(A), a plaintiff bears the burden to establish each element of a *prima facie* case by a preponderance of the evidence. . . . [o]nce that party puts forth a *prima facie* case, the burden shifts to the debtor who must then come forth with evidence rebutting the offense.”); *Morrissy v. Dereve (In re Dereve)*, 381 B.R. 309 (Bankr. N.D. Fla 2007); *Musselman v. Malave*, Case 6:18-ap-00063-KSJ, Doc. 31, p.4 (Bankr. M.D. Fla. Jan. 17, 2019).

<sup>28</sup> *Musselman v. Malave*, Case 6:18-ap-00063-KSJ, Doc. 31, *Memorandum Opinion Denying Debtor's Discharge* (Bankr. M.D. Fla. Jan. 17, 2019); *See also, In re Dakhllalah*, 6:09-BK-04539-KSJ, 2010 WL 148457, at \*4 (Bankr. M.D. Fla. Jan. 7, 2010).

<sup>29</sup> *In re Renner*, 45 B.R. 414, 416 (Bankr. D. Md. 1984)(emphasis in original).

<sup>30</sup> Doc. 23, p. 3.

SOFA, signed his SOFA under penalty of perjury, and failed to file an amended SOFA until after the Trustee sued to deny his discharge, the burden shifted to Defendant to provide sufficient evidence to prove that he did not knowingly and fraudulently make a false oath. This Defendant failed to provide any evidence adequate to meet his burden.

Defendant suggests that denial of his discharge is premature and should not be decided on a motion for summary judgment. But this and other courts have determined fraudulent intent under § 727(a)(4)(A) at the summary judgment stage.<sup>31</sup> “If the nonmoving party’s evidence is a mere scintilla or is not ‘significantly probative,’ the court may grant summary judgment.”<sup>32</sup> Defendant has failed to submit a scintilla of evidence showing the existence of a material disputed fact. His sworn Affidavit is not significantly probative. Plaintiff is entitled to summary judgment in her favor on Count II and Defendant’s discharge shall be denied.

Considering this ruling, Counts I and III will be addressed briefly.

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<sup>31</sup> See, e.g., *In re Mitchell*, 496 B.R. 625 (Bankr. N.D. Fla. 2013); *In re Larkin*, Adv. Pro. No. 12-1809 (KCF), 2015 WL 1472115 (D.N.J. Mar. 31, 2015) (affirming bankruptcy court’s summary judgment that debtor’s false oath was knowingly and fraudulently undertaken as a matter of law); *In re Corona*, 2010 WL 1382122 (granting summary judgment on plaintiff’s § 727(a)(4)(A) claims and denying discharge); and *In re Williamson*, Case No. 11-60755, 2013 WL 441418 (Bankr. S.D. Ga. Feb. 1, 2013).

<sup>32</sup> *In re Arora*, Adv. Pro. No. 15-01894, 2018 WL 485956, at \*1 (Bankr. D.N.J. Jan. 17, 2018) (citing *Liberty Lobby, Inc.*, 477 U.S. 242, 249–250 (1986)).

**B. Count I – Denial of discharge under 11 U.S.C. § 727(a)(2)(A).**

In Count I, Plaintiff seeks denial of Defendant's discharge under Section 727(a)(2)(A).<sup>33</sup>

The circumstantial evidence indicates that Defendant made the transfer with intent to hinder, delay or defraud: the timing of the transfer (43 days before filing bankruptcy), coupled with Defendant's failure to disclose the transfer for almost eight months post-petition, point toward an ill intent. Defendant admits his transfer of real property to his wife for no consideration on the eve of filing bankruptcy, but denies that he had any intent to hinder, delay or defraud. Because Defendant's false oath is only one piece of evidence that could support denial of his discharge under Section 727(a)(2)(A), the Court would be inclined to deny summary judgment and conduct a trial on Count I of the Complaint as to intent.

**C. Count III – Denial of discharge under 11 U.S.C. § 727(a)(7).**

In Count III, Plaintiff seeks to deny Defendant's discharge under Section 727(a)(7). That Section specifically applies only to actions taken "*in connection with another case*, under this title or under the

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<sup>33</sup> 11 U.S.C. § 727(a)(2)(A) (2019).

Bankruptcy Act, concerning an insider. . . .”<sup>34</sup> Although Defendant’s transfer of property was to his wife, a defined insider, Plaintiff does not allege that it was done in connection with another case. For this reason, the Motion is due to be denied as to Count III.

For the reasons stated, it is

ORDERED:

1. Plaintiff’s *Amended Motion for Summary Judgment* (Doc. 16) is GRANTED, as to Count II of the Complaint.
2. The Motion is DENIED as to Counts I and III of the Complaint.

DONE and ORDERED on May 8, 2019.



KAREN K. SPECIE  
Chief U.S. Bankruptcy Judge

cc: all parties in interest

Counsel for Plaintiff is directed to serve a copy of this Order on all interested parties and file proof of service within three (3) days of this Order.

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<sup>34</sup> 11 U.S.C. § 727(a)(7) (2019)(emphasis added).